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SB-1054 Restitution orders: collection. (2015-2016)

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Senate Bill No. 1054

CHAPTER 718

An act to amend Section 2085.5 of, and to add Sections 2085.7 and 2085.8 to, the Penal Code, and to amend Section 19280 of the Revenue and Taxation Code, relating to restitution orders.

[Approved by Governor September 27, 2016. Filed with Secretary of State September 27, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1054, Pavley. Restitution orders: collection.

(1) Under existing law, if a prisoner is punished in state prison or a county jail for a felony and he or she owes a restitution order or fine, the Department of Corrections and Rehabilitation or the agency designated by the board of supervisors in the county where the prisoner is incarcerated, as appropriate, may deduct a minimum of 20% or the balance owing on the order amount, whichever is less, up to a maximum of 50% from the prisoner's wages and trust account or a county jail equivalent of wages and trust account deposits of a prisoner for transfer to the California Victim Compensation Board. Existing law authorizes the department to deduct and retain an administrative fee from a prisoner or parolee, or the agency to deduct and retain an administrative fee from a prisoner, parolee, or former prisoner, that totals 10% of any amount transferred to the board pursuant to these provisions. Existing law authorizes the collection of restitution fines or restitution orders from a person who has been released from a state prison or county jail and is subject to postrelease community supervision or mandatory supervision, as specified.

This bill would instead allow the department or the designated agency to deduct and retain an administrative fee as described in an amount that covers the actual administrative cost of collection, not to exceed 10% of the total amount collected pursuant to the above provisions. The bill would authorize the collection of restitution fines or restitution orders, in a manner to be established by the county board of supervisors, by the county agency designated by the board from a person who has been released from a county jail without being subject to postrelease community supervision or mandatory supervision, as specified. The bill would require a county that elects to collect restitution fines and restitution orders pursuant to these provisions to coordinate efforts with the Franchise Tax Board, as specified. The bill would also make technical, nonsubstantive changes to the organization of the provisions.

(2) Existing law, unless the victim of the crime notifies the department or county to the contrary, allows the department or county to refer a restitution order to the Franchise Tax Board for collection.

This bill would prohibit the department or county from referring the restitution order to the Franchise Tax Board if a county agency has been designated by the county board of supervisors to collect restitution from individuals who have been sentenced to a county jail for a felony, who are on mandatory supervision, or who are on postrelease community supervision, the designated county agency has an existing collection system and objects to collection by the board, and the designated county agency informs the department or county that it will collect the restitution order. If the crime victim entitled to restitution in the order

notifies either the department or the designated county agency with regard to his or her preference of a collecting agency, the bill would require the collection to be performed in accordance with that preference.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2085.5 of the Penal Code is amended to read:

2085.5. (a) If a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4 of this code, the secretary shall deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation Board for deposit in the Restitution Fund. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(b) (1) If a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 and owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4 of this code, the agency designated by the board of supervisors in a county where the prisoner is incarcerated is authorized to deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 50 percent from the county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation Board for deposit in the Restitution Fund. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(2) If the board of supervisors designates the county sheriff as the collecting agency, the board of supervisors shall first obtain the concurrence of the county sheriff.

(c) If a prisoner owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (f) of Section 1202.4 of this code, the secretary shall deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law. The secretary shall transfer that amount to the California Victim Compensation Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. The sentencing court shall be provided a record of the payments made to victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(d) If a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 and owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4 of this code, the agency designated by the board of supervisors in the county where the prisoner is incarcerated is authorized to deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from the county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law. The agency shall transfer that amount to the California Victim Compensation Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program, or may pay the victim directly. The sentencing court shall be provided a record of the payments made to the victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(e) Except as provided in Section 2085.8, the secretary shall deduct and retain from the wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee to cover the actual administrative cost of collection, not to exceed 10 percent of the amount collected pursuant to subdivision (a) or (c). The secretary shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the department. The secretary, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(f) Except as provided in Section 2085.8, if a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in a county where the prisoner is incarcerated may deduct and retain from the county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee to cover the actual administrative cost of collection, not to exceed 10 percent of the total amount collected, pursuant to subdivision (b) or (d). The agency shall deposit the administrative fee moneys in a special deposit account for

reimbursing administrative and support costs of the restitution program of the agency. The agency may retain any excess funds in the special deposit account for future reimbursement of the agency's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(g) In any case in which a parolee owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4 of this code, either the secretary or, if a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated may collect from the parolee any moneys owing on the restitution fine amount, unless prohibited by federal law. The secretary or the agency shall transfer that amount to the California Victim Compensation Board for deposit in the Restitution Fund. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(h) In any case in which a parolee owes a direct order of restitution, imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or paragraph (3) of subdivision (a) of Section 1202.4, either the secretary or, if a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated or a local collection program may collect from the parolee any moneys owing, unless prohibited by federal law. The secretary or the agency shall transfer that amount to the California Victim Compensation Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program, or the agency may pay the victim directly. The sentencing court shall be provided a record of the payments made by the offender pursuant to this subdivision.

(i) Except as provided in Section 2085.8, either the secretary or, if a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated may deduct and retain from moneys collected from parolees an administrative fee to cover the actual administrative cost of collection, not to exceed 10 percent of the total amount collected pursuant to subdivision (g) or (h), unless prohibited by federal law. The secretary or the agency shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the department or agency's restitution program, as applicable. The secretary, at his or her discretion, or the agency may retain any excess funds in the special deposit account for future reimbursement of the department's or agency's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(j) If a prisoner has both a restitution fine and a restitution order from the sentencing court, the department shall collect the restitution order first pursuant to subdivision (c).

(k) If a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 and that prisoner has both a restitution fine and a restitution order from the sentencing court, if the agency designated by the board of supervisors in the county where the prisoner is incarcerated collects the fine and order, the agency shall collect the restitution order first pursuant to subdivision (d).

(l) If a parolee has both a restitution fine and a restitution order from the sentencing court, either the department or, if the prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated may collect the restitution order first, pursuant to subdivision (h).

(m) If an inmate is housed at an institution that requires food to be purchased from the institution canteen for unsupervised overnight visits, and if the money for the purchase of this food is received from funds other than the inmate's wages, that money shall be exempt from restitution deductions. This exemption shall apply to the actual amount spent on food for the visit up to a maximum of fifty dollars (\$50) for visits that include the inmate and one visitor, seventy dollars (\$70) for visits that include the inmate and two or three visitors, and eighty dollars (\$80) for visits that include the inmate and four or more visitors.

(n) (1) Amounts transferred to the California Victim Compensation Board for payment of direct orders of restitution shall be paid to the victim within 60 days from the date the restitution revenues are received by the California Victim Compensation Board. If the restitution payment to a victim is less than twenty-five dollars (\$25), then payment need not be forwarded to that victim until the payment reaches twenty-five dollars (\$25) or when the victim requests payment of the lesser amount.

(2) If a victim cannot be located, the restitution revenues received by the California Victim Compensation Board on behalf of the victim shall be held in trust in the Restitution Fund until the end of the state fiscal year subsequent to the state fiscal year in which the funds were deposited or until the time that the victim has provided current address information, whichever occurs sooner. Amounts remaining in trust at the end of the specified period of time shall revert to the Restitution Fund.

(3) (A) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the department, which shall verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the department, the California Victim Compensation Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (c) or (h).

(B) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the agency designated by the board of supervisors in the county where the prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 is incarcerated, which may verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the agency, the California Victim Compensation Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (d) or (h).

SEC. 2. Section 2085.7 is added to the Penal Code, to read:

2085.7. (a) When a prisoner who owes a restitution fine, or any portion thereof, is released from the custody of a county jail facility after completion of a term in custody pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170, he or she has a continuing obligation to pay the restitution fine in full. The balance of the restitution fine remaining unpaid after completion of a term in custody pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170 is enforceable and may be collected, in a manner to be established by the county board of supervisors, by the department or county agency designated by the board of supervisors in the county in which the prisoner is released. If a county elects to collect restitution fines, the department or county agency designated by the county board of supervisors shall transfer the amount collected to the California Victim Compensation Board for deposit in the Restitution Fund.

(b) When a prisoner who owes payment for a restitution order, or any portion thereof, is released from the custody of a county jail facility after completion of a term in custody pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170, he or she has a continuing obligation to pay the restitution order in full. The balance of the restitution order remaining unpaid after completion of a term in custody pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170 is enforceable and may be collected, in a manner to be established by the county board of supervisors, by the agency designated by the county board of supervisors in the county in which the prisoner is released. If the county elects to collect the restitution order, the agency designated by the county board of supervisors for collection shall transfer the collected amount to the California Victim Compensation Board for deposit in the Restitution Fund or may pay the victim directly. The sentencing court shall be provided a record of payments made to the victim and of the payments deposited into the Restitution Fund.

(c) The amount of a restitution order or restitution fine that remains unsatisfied after completion of a term in custody pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170 is to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(d) Except as provided in Section 2085.8, at its discretion, a county board of supervisors may impose a fee upon the individual after completion of a term in custody pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170 to cover the actual administrative cost of collecting the restitution fine and the restitution order, in an amount not to exceed 10 percent of the amount collected, the proceeds of which shall be deposited into the general fund of the county.

(e) If a county elects to collect both a restitution fine and a restitution order, the amount owed on the restitution order shall be collected before the restitution fine.

(f) If a county elects to collect restitution fines and restitution orders pursuant to this section, the county shall coordinate efforts with the Franchise Tax Board pursuant to Section 19280 of the Revenue and Taxation Code.

(g) Pursuant to Section 1214, the county agency selected by a county board of supervisors to collect restitution fines and restitution orders may collect restitution fines and restitution orders after an individual has completed a term in custody pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170.

(h) For purposes of this section, the following definitions shall apply:

(1) "Restitution fine" means a fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4.

(2) "Restitution order" means an order for restitution to the victim of a crime imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (f) of Section 1202.4.

SEC. 3. Section 2085.8 is added to the Penal Code, to read:

2085.8. (a) Compensatory or punitive damages awarded by trial or settlement to any inmate, parolee, person placed on postrelease community supervision pursuant to Section 3451, or defendant on mandatory supervision imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170 in connection with a civil action brought against a federal, state, or local jail, prison, or correctional facility, or any official or agent thereof, shall be paid directly, after payment of reasonable attorney's fees and litigation costs approved by the court, to satisfy any outstanding restitution orders or restitution fines against that person. The balance of the award shall be forwarded to the payee after full payment of all outstanding restitution orders and restitution fines, subject to subdivision (c).

(b) The department shall make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages. For any prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency may make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages.

(c) (1) The secretary shall deduct and retain from any prisoner or parolee settlement or trial award an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine, unless prohibited by federal law.

(2) The agency may deduct and retain from any settlement or trial award of a person previously imprisoned in county jail an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine, unless prohibited by federal law.

(3) The secretary or the agency shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the department's or agency's restitution program, as applicable. The secretary, at his or her discretion, or the agency may either retain any excess funds in the special deposit account for future reimbursement of the department's or agency's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

SEC. 4. Section 19280 of the Revenue and Taxation Code is amended to read:

19280. (a) (1) (A) Fines, state or local penalties, bail, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a juvenile or superior court of the State of California upon a person or any other entity that are due and payable in an amount totaling no less than one hundred dollars (\$100), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code, and any amounts due pursuant to Section 903.1 of the Welfare and Institutions Code may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the juvenile or superior court, the county, or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board. Except as specified in subparagraph (B), the Department of Corrections and Rehabilitation or county may refer a restitution order to the Franchise Tax Board, in accordance with subparagraph (B) of paragraph (2), for any person subject to the restitution order who is or has been under the jurisdiction of the Department of Corrections and Rehabilitation or the county.

(B) The Department of Corrections and Rehabilitation or the county shall not refer a restitution order to the Franchise Tax Board if a county agency has been designated by the county board of supervisors to collect restitution from individuals who (i) are serving a sentence in a county jail pursuant to subdivision (h) of Section 1170 of the Penal Code, (ii) are on mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170 of the Penal Code, or (iii) are on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) of Part 3 of the Penal Code, the designated county agency has an existing collection system and objects to collection by the Franchise Tax Board, and the designated county agency informs the Department of Corrections and Rehabilitation or the county that it will collect the restitution order.

(C) If the crime victim entitled to restitution in the order notifies either the Department of Corrections and Rehabilitation or the designated county agency with regard to his or her preference of a collecting agency, that preference shall be honored and the collection shall be performed in accordance with the preference of the victim.

(2) For purposes of this subdivision:

(A) The amounts referred by the juvenile or superior court, the county, or the state under this section may include an administrative fee and any amounts that a government entity may add to the court-imposed obligation as a result of the underlying offense, trial, or conviction. For purposes of this article, those amounts shall be deemed to be imposed by the court.

(B) Restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, provided that all of the following apply:

(i) The government entity has the authority to collect on behalf of the state or the victim.

(ii) The government entity shall be responsible for distributing the restitution order collections, as appropriate.

(iii) The government entity shall ensure, in making the referrals and distributions, that it coordinates with any other related collection activities that may occur by superior courts, counties, or other state agencies.

(iv) The government entity shall ensure compliance with laws relating to the reimbursement of the Restitution Fund.

(C) The Franchise Tax Board shall establish criteria for referral that shall include setting forth a minimum dollar amount subject to referral and collection.

(b) The Franchise Tax Board, in conjunction with the Judicial Council, shall seek whatever additional resources are needed to accept referrals from all 58 counties or superior courts.

(c) Upon written notice to the debtor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral, shall be treated as final and due and payable to the State of California, and shall be collected from the debtor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(d) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court or the state referring to the amount due described in subdivision (a) shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the debtor and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) A collection under this article is not a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).